IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3425 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LALO @ LALU @ LALJI HIRABHAI VANKAR

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 3425 of 2001

MR NM KAPADIA for Petitioner

MR ND GOHEL, APP for Respondents No. 1-3

RULE SERVED BY DS for Respondents No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 06/10/2001

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social

Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 23-3-2001 passed by the Police Commissioner, Surat City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to him, the present petitioner was arrested in two cases, namely, offence registered as III C.R. No.841 of 2001 at Katargam Police Station dated 10-11-2000 in which he was alleged to have found in custody of 553 bottles of indian made foreign liquor and offence registered as III C.R. No.89 of 2001 dated 16-2-2001 at Katargam Police Station in which he was alleged to have found in custody of 12 bottles of indian made foreign liquor and in both these cases, he has been released on bail.

4. He has further argued that out of the two incidents which have taken place as per the record, the finding given by the authority in respect of one case does not tally with the finding in respect of other and there being non-application of mind, order of detention is bad and requires to be quashed and set aside.

5. He has also argued that the brother of the detenu has personally handed over a representation dated 3-4-2001 in respect of the detenu at the office of the respondent No.1 on 3-4-2001 and a copy to respondent No.2. However, said representation has not been considered either by the respondent No.1 or by the respondent No.2 and, therefore, it is a point which is required to be taken into consideration.

6. According to him, statement of witnesses namely, Prakash Vaman, Arjun Babla and H.P.Pandya have not been provided to the detenu in respect of offence registered as III C.R. 841 of 2000 whereas statements of Prakash Vaman and Bhaskar Pitambar have not been provided to the detenu in respect of offence registered as III C.R. No.89 of 2001. He has contended that though statements of these witnesses have been relied upon by the detaining authority in passing the order of detention, same have not been provided to the detenu and hence, the order of detention is illegal and same requires to be quashed and

set aside. Learned A.P.P., N.D.Gohel, has fairly admitted the same.

7. It has been held in a judgment reported in 1982 S.C. 696 in the case of Mohd. Zakir Vs. Delhi Administration and Ors. at head note as under:

"Detention-Documents relied on by authorities not supplied with grounds of detention-Detention is illegal."

It has been further held by the Apex Court as under:

"It is manifest that the question of demanding the documents is wholly irrelevant because it is the constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention pari passu the grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with."

8. It is the duty of the authority to supply copies of the statements with the detention order. Here in this case, copies of the statements of aforesaid witnesses, though relied upon by the authority in passing the impugned order of detention, have not been supplied to the detenu. Therefore, there is infraction of safeguards provided under the provisions of Art.22(5) of the Constitution of India and the petitioner has been deprived of making an effective representation against the order of detention which makes the order of detention illegal. Hence, the order of detention deserves to be quashed and set aside and this petition requires to be allowed.

9. The petition is allowed. The impugned order of detention dated 23-3-2001 passed by the Police Commissioner, Surat City, against the petitioner-detenu is hereby quashed and set aside. The detenu-Lalo @ Lalu @ Lalji Hirabhai Vankar is hereby ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs."

(R.P.DHOLAKIA,J.)

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